



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2004

Mr. Ken Johnson  
Assistant City Attorney  
City of Waco - Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2004-2556

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198559.

The Waco Police Department (the "department") received a letter seeking information pertaining to a particular accident. You assert that the letter is a motion for discovery and does not constitute a request for information under the Public Information Act (the "Act"). In the alternative, you claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

We begin by addressing your claim that the letter the department received was a request for a discovery rather than a request for information under the Act. Section 552.0055 of the Government Code provides that "[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under this chapter." Gov't Code § 552.0055.

You assert that "even though requester has couched a request for information as a request under the Public Information Act, the request is actually a request for discovery which *should be presented* pursuant to the rules of civil procedure and not be considered a request for information under the PIA." (Emphasis added.) You inform us that this contention is based on the fact that "litigation is present under these circumstances. If so, discovery is the proper process in which to gather or discover evidence for a trial, not the Public Information Act." You further argue that "[i]f attorneys can use the PIA to discover what they need in pursuing

or being involved in litigation, this would circumvent—and practically eliminate—the need to use discovery.”

You do not assert that the letter the department received is in fact a “subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure.” You assert instead that, under the present circumstances, the requestor *should have* made a discovery request rather than a public information request. Section 552.0055 applies only when a governmental body receives a “subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure.” This section does not apply in all instances in which a governmental body *could have* received such a subpoena or discovery request. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature’s intent is served by beginning with statute’s plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)) (“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.”). We note that, when a governmental body receives a request for information that relates to pending or anticipated litigation, it may raise section 552.103 of the Government Code as an exception to disclosure in order to protect its litigation interests. *See Gov’t Code* § 552.103; Open Records Decision No. 551 at 4 (1990) (noting that predecessor to section 552.103 protects discovery process and avoids interference in matters properly resolved in court by excepting from disclosure information when access to such material is more appropriately sought through discovery).

We turn now to the letter itself. This letter is styled “Freedom of Information Act - Open Records Request.” Nothing in the letter reflects that it meets the elements of a subpoena duces tecum. *See Code Crim. Proc. arts. 24.02* (defining subpoena duces tecum), .03 (describing procedures for obtaining subpoenas, including subpoena duces tecum). Furthermore, the letter does not indicate that it was otherwise issued pursuant to the authority of a statute or a rule of civil or criminal procedure. We therefore find that the letter the department received was a request for information under the Act rather than a subpoena duces tecum or motion for discovery.

We next note that the submitted information includes a “Texas Peace Officer’s Accident Report.” Section 550.065(b) of the Transportation Code states that it “applies only to information that is held by the [Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under [chapter 552] or Section 601.004 [of the Transportation Code.]” This section states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of

information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the department with all three pieces of required information. Thus, you must release the submitted “Texas Peace Officer’s Accident Report” to the requestor. Although you contend that information in this report is excepted from disclosure under section 552.130, the exceptions found in the Act do not, as a general rule, apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Thus, you must release an unredacted copy of this report to the requestor.

You have also submitted a compact disc (“CD”) containing an audio recording of a 911 call concerning the accident. You state that “the CD does not include any information that would be considered confidential under Gov’t Code, Section 552.101 and Health & Safety Code, Section 772.218” and claim no exceptions under the Act regarding this information. Because you have claimed no exceptions and the information at issue is not otherwise confidential by law, you must release the recording to the requestor.

In summary, an unredacted copy of the “Texas Peace Officer’s Accident Report” must be released in accordance with section 550.065 of the Transportation Code. The department must also release the submitted audio recording.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

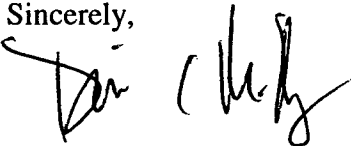
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 198559

Enc. Submitted documents

c: Mr. Michael A. Zimmerman  
Zimmerman, Zimmerman, Cotner & Young, P.C.  
P.O. Box 88  
Waco, Texas 76703  
(w/o enclosures)